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UNITED NATIONS/INTERNATIONAL MARITIME ORGANIZATION CONFERENCE OF PLENIPOTENTIARIES ON A CONVENTION ON MARITIME LIENS AND MORTGAGES

Held at the Palais des Nations, Geneva,
from 19 April to 6 May 1993

Volume II

Report of the Conference

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CONTENTS

Chapter		Paragraphs
	Introduction	1 - 4
I.	Preparation and adoption of a Convention on Maritime Liens and Mortgages (agenda item 8)	5 - 33
	A. General statements	6 - 21
	B. Proceedings of the 3rd (closing) plenary meeting, on 6 May 1993	22 - 33
II.	Consideration and adoption of final resolutions (agenda item 9)	34
III.	Organizational matters	35 - 47
	A. Opening of the Conference	35
	B. Election of the President (agenda item 2)	36
	C. Adoption of the rules of procedure (agenda item 3)	37
	D. Adoption of the agenda (agenda item 4)	38
	E. Organization of the work of the Conference (agenda item 5)	39 - 40
	F. Election of other officers (agenda item 6)	41 - 44
	G. Credentials	45 - 46
	H. Adoption of the report of the Conference (agenda item 11)	47

Annexes

Annex		
I.	Resolution adopted by the Conference: Consideration of a possible review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952	
II.	Attendance	

INTRODUCTION

1. The United Nations General Assembly, by resolution 46/213, decided to convene a United Nations/International Maritime Organization Conference of Plenipotentiaries on a Convention on Maritime Liens and Mortgages during the first half of 1993 for a period of three weeks, to consider the draft convention and to embody the results of its work in a convention on maritime liens and mortgages. Accordingly, the Conference of Plenipotentiaries on a Convention on Maritime Liens and Mortgages was convened by the Secretary-General of UNCTAD and by the Secretary-General of the International Maritime Organization and was held at the Palais des Nations, Geneva, from 19 April to 6 May 1993.

2. This report gives a brief account of the proceedings of the plenary meetings of the Conference.

Tribute to the memory of H.E. Mr. Turgut Ozal, President of Turkey

3. At its 1st plenary meeting, on 19 April 1993, the Conference of Plenipotentiaries observed a moment of silence in tribute to the memory of H.E. Mr. Turgut Ozal, President of the Republic of Turkey, who died on 17 April 1993.

4. The representative of Turkey made a brief statement in acknowledgement of the condolences expressed by the Conference.

Chapter I

PREPARATION AND ADOPTION OF A CONVENTION ON MARITIME LIENS AND MORTGAGES (Agenda item 8)

5. The following documents were before the Conference under agenda item 8:

- "Draft articles for a convention on maritime liens and mortgages", prepared by the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects (A/CONF.162/4, also contained in document JIGE(VI)/8)

- Final Report of the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects (TD/B/C.4/AC.8/27, LEG/MLM/27, JIGE(VI)/8)

- Report of the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects on its sixth session (TD/B/C.4/AC.8/26, LEG/MLM/26, JIGE(VI)/7)

- "Compilation of comments and proposals by Governments, and by intergovernmental and non-governmental organizations, on the draft convention on maritime liens and mortgages" (A/CONF.162/3 and Add.1-3).

A. General statements

6. The Deputy to the Secretary-General of UNCTAD stated that the Conference marked an important event in cooperation between UNCTAD and IMO in the field of maritime legislation. Recalling the background to the establishment of the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects and to the preparatory work concerning the draft convention, he said that the work of the Conference was of considerable interest to both developed and developing countries and to the international shipping community as a whole. Developing countries in particular would welcome the establishment of a legal framework that would facilitate funding on favourable terms for the construction and purchase of ships. There were of course a number of considerations of a commercial, political and legal nature affecting the decision whether or not to advance finance for ship acquisition. However, it was clear that lack of uniformity in the area of maritime liens and mortgages and inadequate enforcement procedures in some countries would negatively affect decisions of financiers in granting loans.

7. The existing international Conventions had not succeeded in achieving a high level of international uniformity. The current situation concerning maritime liens and mortgages was one of a disunified regime, where financiers, creditors and maritime claimants could not be certain as to the scope, validity and ranking of their security. This situation was a cause of concern, especially for developing countries, which were particularly affected by being unable to obtain sufficient finance for the development of their merchant fleets.

8. One of the main objectives of the Joint Group in the preparation of the draft articles had been to produce a text which would receive wide international acceptance. Many ideas and approaches had been considered in order to achieve the balanced compromise text. The draft had taken into account, as much as possible, the different approaches to the problem expressed in national legislations. He was therefore convinced that the new convention on maritime liens and mortgages would be an important component of the continuing efforts within the United Nations and IMO to facilitate international maritime transport and world trade in general.

9. The Director, Legal Affairs and External Relations Division, International Maritime Organization (IMO), speaking on behalf of the Secretary-General of IMO, said that the draft convention was a result of the close and most fruitful cooperation between UNCTAD and IMO in the task of achieving international uniformity in rules and regulations of paramount importance for the facilitation of maritime transport and world trade. He stressed, however, that the Conference would only have a successful outcome if compromise and consensus could be achieved in respect of the outstanding issues. It was imperative to adopt a convention that was widely accepted in order to avoid legal uncertainties, unnecessary and cumbersome administrative measures, forum shopping, or inordinate expenses affecting the interests of the shipping and maritime community.

10. One of the most important aims of the new convention was that of encouraging ship financing by limiting the number of maritime liens taking priority over mortgages to those which were indispensable on social and economic grounds. This would facilitate the channelling of financial resources towards the strengthening of merchant fleets in developing countries. A new convention on maritime liens and mortgages would further provide a firm foundation which could enable IMO and UNCTAD to continue their work on the progressive uniformity of maritime law at an international level to the benefit of all parties involved.

11. The representative of Norway referred to the experience in his country, one of the very few to have adopted and implemented the 1967 Convention. Its provisions had proved to be workable and there had been few disputes requiring settlement in court. The draft under consideration at the Conference contained few changes in respect of the 1967 Convention, but it did present some serious problems.

12. In the opinion of his delegation it was in the interests of both the ship-owning and the finance industry that the number of maritime liens be restricted and the "life" of those liens kept short. This basic approach would also be in the interest of States which at present did not have national merchant fleets of a size compatible with their exports/imports and which needed to strengthen their fleets with the help of foreign finance. At present there was no rationale to justify the many liens contained in the 1926 Convention. Accordingly, affording a maritime claim with a lien should be an exception which should be allowable strictly for social or equity reasons.

13. In line with this approach, his delegation felt that the draft convention could be further improved by the deletion from article 4 of the liens

established in respect of claims for port, canal and other waterway dues and pilotage dues. These claims were normally related to the performance of a contract in respect of which the creditworthiness of the owner could be assessed by the authority. In many cases advance payment could be required to allow the ship to enter port, thus securing any eventual claim without need for recourse to a maritime lien.

14. He stated that Norway also favoured the deletion of article 6 on the grounds that article 4 should be exclusive as far as liens were concerned, and he believed that contracting States should not be allowed to legislate on a national basis for additional liens, even if they were given priority after mortgages or hypothèques. Alternatively, and at the very least, a clarification should be included in this provision indicating that the national liens referred to should not have the characteristic of a maritime lien and should not survive a voluntary sale. In connection with the situation of suppliers of goods and services to vessels, his delegation's view was that they should, like other suppliers, make a credit risk assessment rather than extend credit more or less automatically with a hidden charge against the vessel as collateral. In the latter cases, owners who were financially unsound would have the possibility of continuing trading to the detriment of the mortgagee. There were also unfortunately frequent cases in which financially unsound charterers traded on the credit of the owner and the mortgagee without their knowing it. This could only happen when suppliers gave charterers unwarranted credit, knowing that they had a hidden charge against the vessel as security. He also referred to the difficulties which article 6 created with respect to choice of law questions.

15. Bearing in mind the interests of seafarers, he considered that the period provided for the extinction of liens securing their claims should start to run at the time when they left the vessel. He also expressed his delegation's preference that crew wages earned in respect of the time during which the vessel was under arrest be deemed to be costs and expenses arising out of the arrest, with the special privilege afforded to such costs and expenses in accordance with article 11, paragraph 2.

16. The representative of Mexico expressed his delegation's concern at some of the draft articles which were contrary to Mexican national laws. He mentioned as an example articles 4 and 5 regarding priority of maritime liens, which were contrary even to the Mexican constitution. He considered that there was a need for amending some of the draft articles and underlined the desirability of introducing a new article for definitions that would in his delegation's view facilitate the application of the convention.

17. The representative of China stated that since 1978 his country had established a considerable merchant fleet and had set up 140 shipping companies with ships calling at ports in 150 countries. In the promotion of maritime transport and trade, 89 Chinese ports were now open to foreign ships. A new maritime code had been adopted in 1992 which would enter into force on 1 July 1993. It followed the general trend of international legislation and took into consideration the provisions of the 1967 Convention as well as the new draft convention in formulating provisions on maritime liens and ship mortgages. The text of the draft convention could serve as a basis for

discussion at the Conference with the aim of adopting an international convention that would be widely accepted.

18. The representative of the Netherlands said that harmonization of maritime legislation in the field of maritime liens and mortgages was of interest for both developed and developing countries. Such harmonization would facilitate the availability of maritime credit, which was of particular interest for developing countries wishing to develop their own commercial fleets. Since the need for an effective national right for mortgages was generally accepted, mandatory guidelines for national legislation would provide for more unification. He considered the draft articles for a convention on maritime liens and mortgages to be a good starting point for drawing up a new convention on the subject. Finally, he stressed the importance of restricting the number of maritime liens ranking before mortgages and stated his delegation's agreement with the views expressed by the Norwegian delegation on this issue.

19. The representative of the United States of America, noting the difficulties involved in developing an international convention on maritime liens and mortgages, said that, in order to be widely accepted, the new convention would have to balance fairly the maritime interests of shipowners and mortgagees, of those who provided services to ensure the continued safe operation of ships, and of those who suffered harm from the operation of ships, including damage to the environment, unless compensation was provided by another international Convention.

20. He stated that an important purpose underlying the convention was to protect the lender's security in order to encourage greater ship financing. However, equal consideration should be given to other purposes such as ensuring the security for those who extended credit to support a ship's operation by supplying victuals for the crew and services to the vessel.

21. The representative of the International Chamber of Shipping said that shipowners fully supported efforts to adopt a new convention on maritime liens and mortgages to bring genuine uniformity into this complex area of maritime law. The 1967 Convention was broadly satisfactory to shipowners but it had not received worldwide recognition and a new convention was therefore necessary. He hoped that the Conference would succeed in adopting a new instrument, similar to the 1967 Convention, with as few maritime liens as possible, and that the new convention would receive worldwide recognition.

B. Proceedings of the 3rd (closing) plenary meeting, on 6 May 1993

22. The Chairman of the Main Committee, reporting on the substantive work carried out by the Committee on the draft convention on maritime liens and mortgages, highlighted some of the issues concerning the main articles and the discussions held in the Committee. Regarding article 4, which established the list of maritime liens, he observed that, in spite of various proposed amendments, the delicate compromise reached by the Joint Intergovernmental Group of Experts had been maintained. Article 6 had given rise to considerable discussions, as opinions were divided on the desirability of the Convention's containing provisions dealing with maritime liens granted by States Parties under national law. The present text of article 6 embodied the

compromise reached and it was hoped that it would contribute to a wide acceptance of the Convention. Similarly article 7 dealing with rights of retention reflected a compromise, since varying views had been held as to whether or not the Convention should cover that subject. The intention of article 11 was to secure the interests of the mortgagees and of the claimants entitled to receive notice of forced sale of the vessel. Article 12 contained provisions allowing a State Party to provide in its law that the cost of the removal of a sunken vessel by a public authority in the interests of safe navigation or protection of the marine environment should be paid out before claims secured by a maritime lien. The Convention did not include provisions dealing with reservations and the matter was subject to the existing international law.

Action by the Conference

23. At its 3rd (closing) plenary meeting, on 6 May 1993, the Conference adopted the draft articles for an International Convention on Maritime Liens and Mortgages, 1993, as set out in A/CONF.162/L.5, having first finalized article 19 (1) to read "... 10 States have expressed ..." and having also taken note that a number of purely editorial amendments would need to be made to the French text.

24. At the same meeting, the Conference adopted the draft final act of the United Nations/International Maritime Organization Conference of Plenipotentiaries on a Convention on Maritime Liens and Mortgages prepared by the Conference secretariat (A/CONF.162/L.4/Rev.1).*

25. At the signing ceremony held in the course of the closing meeting, the representatives of the following States signed the Final Act: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Colombia, Côte d'Ivoire, Cuba, Cyprus, Democratic People's Republic of Korea, Denmark, Egypt, Finland, France, Gabon, Germany, Ghana, Greece, Guinea, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Kenya, Kuwait, Liberia, Madagascar, Mexico, Morocco, Netherlands, Nigeria, Norway, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Russian Federation, Senegal, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Tunisia, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, and Venezuela.

26. After the signing of the Final Act, the Conference agreed that the Senior Legal Officer of UNCTAD should transmit the Final Act together with the signatures of the member States and the text of the International Convention on Maritime Liens and Mortgages, as adopted, to the depository at the United Nations Headquarters in New York.

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* For the text of the Final Act and the Convention, see volume I of these proceedings (A/CONF.162/7).

Concluding statements

27. The representative of Mexico reiterated his delegation's concern at some of the articles of the Convention which were incompatible with his national law. This was the case particularly for articles 4 and 5. Nevertheless, his delegation was not against the prevailing consensus of the Conference, and the Convention would be submitted to the Mexican authorities for consideration.

28. The representative of Colombia stated that his delegation was pleased with the consensus reached by the Conference. However, he wished to place on record that, in the form in which they had been approved by the Conference, article 4 (1) and article 5 (2) dealing with ranking of maritime liens were inconsistent with Colombian national legislation. Accordingly, this fact would be conveyed to the relevant Colombian authorities for their consideration.

29. The representative of China expressed satisfaction with the Convention. Valuable work had been carried out by the Joint Intergovernmental Group of Experts and the successful outcome of the Conference was due to the spirit of compromise shown by all delegations during the negotiations. He was convinced that the Convention would receive universal acceptance and that it would provide a legal framework to facilitate ship financing and the development of national merchant fleets and encourage uniformity of maritime law. Regarding article 16 dealing with temporary change of flag, he said that this provision, which had not been covered by the 1926 or 1967 Conventions, would be beneficial for ship financing.

30. The representative of Australia expressed his understanding of article 3(1) as intending to ensure that holders of registered mortgages, "hypothèques" or charges were protected in voluntary sale situations by not permitting deregistration without the deletion of mortgages or the consent of such holders. He noted that the second sentence in article 3(1) was meant to clarify the general obligation, as stated in the first sentence, to deal with cases where a change of ownership required involuntary deregistration of the vessel in accordance with the law of a State Party. He pointed out that this formulation should not be interpreted as barring a State Party from deregistering the vessel after a voluntary sale involved a change of nationality in the ownership of the vessel.

31. The representative of Spain expressed his satisfaction at the consensus and results achieved by the Conference. The Convention would improve conditions for ship financing and the development of national merchant fleets. Regarding the term "other sums" in article 4(1), he said that, in his view, the term included severance pay or compensation on grounds of dismissal, although this was not specifically spelled out. He noted with satisfaction the wording of article 13, according to which the Convention would also apply to all sea-going vessels not registered in a State Party, provided such vessels were subject to the jurisdiction of a State Party. He felt that the said article would ensure a high degree of uniformity at both the international and the national level. Finally, he emphasized the importance of an early ratification of the Convention.

32. The Secretary-General of the International Maritime Organization said that it was extremely gratifying that the new Convention on Maritime Liens and Mortgages had been adopted by consensus. Such consensus should lead to the early entry into force of the Convention. He emphasized the importance in this connection of the preparatory work done by the Joint Intergovernmental Group of Experts. A large number of ratifications would ensure that the instrument became universally accepted. Bearing in mind the terms of the resolution adopted by the Conference (see chapter II and annex I below), he promised the full commitment of the IMO secretariat to continue its co-operation with UNCTAD in the field of maritime law. Finally, he thanked the UNCTAD secretariat for the cooperation and assistance provided to the IMO officers who had participated in the Conference.

33. The Deputy Secretary-General of UNCTAD highlighted the importance of the new Convention in contributing to the harmonization of international maritime legislation and the encouragement of ship financing. He associated himself with the words of the Secretary-General of the International Maritime Organization regarding the outcome of the Conference and commended the spirit of compromise shown by all delegations in order to achieve a wide consensus in adopting the Convention. He welcomed further cooperation between the two organizations in the promotion and development of international maritime law and expressed satisfaction with the resolution adopted by the Conference. The law-making role of the United Nations in the economic and social fields was very important, and he noted with regret the weakening of this role in recent years.

Chapter II

CONSIDERATION AND ADOPTION OF FINAL RESOLUTIONS

(Agenda item 9)

34. At its 3rd (closing) plenary meeting, on 6 May 1993, the Conference adopted the draft resolution on the consideration of a possible review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952 (A/CONF.162/L.6), submitted by the Chairman of the Main Committee.*

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* For the resolution as adopted, see annex I below.

Chapter III

ORGANIZATIONAL MATTERS

A. Opening of the Conference

35. On behalf of the Secretary-General of UNCTAD, the Deputy to the Secretary-General of UNCTAD declared open the Conference of Plenipotentiaries on a Convention on Maritime Liens and Mortgages on 19 April 1993.

B. Election of the President
(Agenda item 2)

36. At its 1st plenary meeting, on 19 April 1993, the Conference elected by acclamation Mr. Walter Müller (Switzerland) to serve as President of the Conference.

C. Adoption of the rules of procedure
(Agenda item 3)

37. At the same meeting, the Conference adopted the provisional rules of procedure of the Conference prepared by the secretariats of UNCTAD and IMO (A/CONF.162/2), having first agreed to amend rule 3 and to make an editorial correction to rule 29. Subsequently, the UNCTAD secretariat circulated a note validating the rules of procedure as adopted and indicating the agreed modifications to rules 3 and 29 (cf. A/CONF.162/5).

D. Adoption of the agenda
(Agenda item 4)

38. At the same meeting, the Conference adopted the provisional agenda contained in section I of A/CONF.162/1. The agenda for the Conference therefore read as follows:

1. Opening of the Conference
2. Election of the President
3. Adoption of the rules of procedure
4. Adoption of the agenda
5. Organization of the work of the Conference
6. Election of other officers
7. Credentials:
   (a) Appointment of a Credentials Committee
   (b) Report of the Credentials Committee
8. Preparation and adoption of a convention on maritime liens and mortgages

9. Consideration and adoption of final resolutions

10. Other business

11. Adoption of the report of the Conference.

E. Organization of the work of the Conference (Agenda item 5)

39. At the same meeting, in accordance with rule 46 of the rules of procedure, the Conference established a Main Committee to deal with the entire set of draft articles, including final clauses. In accordance with rule 47, each State participating in the Conference was entitled to be represented on the Main Committee.

40. At its 2nd plenary meeting, on 23 April 1993, the Conference established a Drafting Committee. The Drafting Committee was open-ended with a selected core membership, taking into account the need for equitable geographical distribution. The core membership of the Drafting Committee was as follows: Algeria, Argentina, China, Côte d'Ivoire, Egypt, France, Germany, Indonesia, Mexico, Nigeria, Norway, Poland, Spain, Russian Federation, United Kingdom of Great Britain and Northern Ireland, and the United States of America.

F. Election of other officers (Agenda item 6)

41. At its 1st plenary meeting, on 19 April 1993, the Conference completed the election of its officers, in accordance with rule 6 of the rules of procedure, as follows:

Rapporteur-General:	Mr. Domingo Nicolas Rotondaro	(Argentina)
Vice-Presidents:	Mr. Jorgen Bredholt	(Denmark)
	Mr. George Cooper	(Liberia)
	Ms. Maria Dragun-Gertner	(Poland)
	Mr. Marc Gauthier	(Canada)
	Mr. Hu Jinglu	(China)
	Mr. Wyoso Prodjowarsito	(Indonesia)
	Mr. Walter de Sá Leitão	(Brazil)

42. At the same meeting, the Conference elected Mr. G.G. Ivanov (Russian Federation) to serve as Chairman of the Main Committee.

43. In accordance with rule 11 of the rules of procedure, the President, the Vice-Presidents, the Rapporteur-General and the Chairman of the Main Committee constituted the General Committee.

44. At its 1st meeting, on 27 April 1993, the Drafting Committee elected Mrs. Beate Czerwenka (Germany) to serve as its Chairman.

G. Credentials

(a) Appointment of a Credentials Committee

45. Also at its 1st meeting, the Conference appointed a Credentials Committee in accordance with rule 4 of the rules of procedure. The composition of the

Credentials Committee was based on that of the Credentials Committee of the United Nations General Assembly at its forty-seventh session. It was agreed that, should any of the States members of the Credentials Committee of the General Assembly not be represented at the Conference, the regional group concerned would be requested to nominate a replacement. Accordingly, the following nine member States constituted the Credentials Committee: Argentina, Australia, China, Ghana, India, Kenya, Russian Federation, United States of America, and Venezuela.

(b) Report of the Credentials Committee

46. At its 3rd (closing) meeting, on 6 May 1993 the Conference adopted the report of the Credentials Committee (A/CONF.162/6).

H. Adoption of the report of the Conference (Agenda item 11)

47. Also at its closing meeting, the Conference adopted its draft report (A/CONF.162/L.1) and authorized the Rapporteur-General to complete the final report as appropriate.

Annex I

RESOLUTION ADOPTED BY THE CONFERENCE

Consideration of a possible review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952

The United Nations/International Maritime Organization Conference of Plenipotentiaries on a Convention on Maritime Liens and Mortgages,

HAVING ADOPTED the International Convention on Maritime Liens and Mortgages, 1993,

BEARING IN MIND the recommendation of the UNCTAD/IMO Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects,

RECOMMENDS that the relevant bodies of UNCTAD and IMO, in the light of the outcome of the Conference, reconvene the Joint Intergovernmental Group with a view to examining the possible review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952 and invite the secretariats of UNCTAD and IMO, in consultation with relevant non-governmental organizations, such as the Comité Maritime International, to prepare the necessary documentation for the meetings of the Group.

Annex II

ATTENDANCE a/

1. The following States were represented at the Conference:

Algeria
Argentina
Australia
Austria
Belgium
Bolivia
Brazil
Bulgaria
Canada
Chile
China
Colombia
Côte d'Ivoire
Cuba
Cyprus
Democratic People's Republic of Korea
Denmark
Egypt
Finland
France
Gabon
Germany
Ghana
Greece
Guinea
India
Indonesia
Iran (Islamic Republic of)
Iraq
Israel
Italy
Japan
Kenya
Kuwait
Latvia
Liberia
Madagascar
Mauritius
Mexico
Morocco
Netherlands
Nigeria
Norway
Panama
Peru
Philippines
Poland
Portugal
Republic of Korea
Russian Federation
Senegal
Spain
Sri Lanka
Sudan
Sweden
Switzerland
Syrian Arab Republic
Thailand
Tunisia
Turkey
United Kingdom of Great Britain and Northern Ireland
United Republic of Tanzania
United States of America
Uruguay
Venezuela

2. The following associate member of IMO attended the Conference as an observer:

Hong Kong

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a/ For the list of participants, see A/CONF.162/INF.1.

3. The following specialized agencies were represented at the Conference:

International Labour Organisation
World Meteorological Organization

4. The following intergovernmental organizations were represented at the Conference:

European Economic Community
League of Arab States
Organisation for Economic Co-operation and Development
Organization of African Unity

5. The following non-governmental organizations were represented at the Conference:

Association of African National Shipping Lines b/
Baltic and International Maritime Council
Iberoamerican Institute of Maritime Law c/
International Association of Ports and Harbours
International Chamber of Commerce
International Chamber of Shipping
International Confederation of Free Trade Unions
International Maritime Committee
International Ship Suppliers Association
Latin American Association of Navigational Law and Law of the Sea

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b/ Participated by decision of the Conference at its 3rd plenary meeting, on 6 May 1993.

c/ Participated by decision of the Conference at its 1st plenary meeting, on 19 April 1993.